

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERRICK SMALLWOOD,	§
	§
Defendant Below-	§ No. 473, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0103019016A
Plaintiff Below-	§
Appellee.	§

Submitted: December 6, 2006

Decided: February 13, 2007

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

ORDER

This 13th day of February 2007, upon consideration of appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Derrick Smallwood, filed this appeal from the Superior Court's denial of his motion to extend the three-year limitations period for filing a motion for postconviction relief under Superior Court Criminal Rule 61(i)(1). The State has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Smallwood's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Smallwood in January 2002 of two counts of attempted murder and related offenses. This Court affirmed his convictions on appeal.¹ The mandate issued on January 23, 2003. Thus, under Superior Court Criminal Rule 61, Smallwood had three years from January 23, 2003 in which to file a timely motion for postconviction relief.²

(3) On May 31, 2006, Smallwood filed a motion with the Superior Court requesting the court to grant an extension of the three year limitations period to permit Smallwood to file a motion for postconviction relief. The Superior Court denied the motion, and this appeal ensued.

(4) Under the circumstances, we find it manifest that the judgment of the Superior Court should be affirmed. Superior Court Criminal Rule 45(b)(2) expressly provides that the Superior Court “may not extend the time for taking any action” under Rule 61(i)(1). To the extent Smallwood now contends that the procedural bar of Rule 61(i)(1) is inapplicable to his

¹ *Smallwood v. State*, 2002 WL 31883015 (Del. Dec. 26, 2002).

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

postconviction claims under Rule 61(i)(5),³ Smallwood did not raise that contention below, and we will not consider it for the first time on appeal.⁴

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ Superior Court Criminal Rule 61(i)(5) provides, in part, that the limitations period contained in Rule 61(i)(1) is inapplicable to a “claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice....”

⁴ Del. Supr. Ct. R. 8.